T · ·Mobile·

October 3, 2008

EX PARTE NOTICE

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92

Dear Ms. Dortch:

T-Mobile USA, Inc. ("T-Mobile") offers its comments in general support of Verizon's recently filed integrated proposal for intercarrier compensation ("ICC") reform that builds on other plans submitted by various industry groups over the last several years, including the adoption of a $0.0007 per minute unified default termination rate ("Verizon Plan").[1] The Verizon Plan represents, on the whole, a workable transition plan that could lead to a more efficiently performing ICC regime. In addition to the $0.0007 termination rate cap, the Verizon Plan would employ a National Comparability Benchmark to equitably balance carriers' reliance on end-user cost recovery and universal service high-cost support. Verizon also acknowledges an originating carrier's right to choose either direct or indirect interconnection with a terminating incumbent local exchange carrier ("ILEC") and generally supports the principle that terminating carriers should not burden originating carriers with excessive costs by designating an unreasonable number of points of interconnection ("POIs") in each LATA.

Almost all industry segments agree that today's ICC regime has needed fundamental repair for many years. The current regime favors legacy wireline interests, is not technologically neutral and is based upon distinctions (e.g., wireline/wireless, interstate/intrastate, and rural/non-rural) that have become irrelevant in today's marketplace. Consumers increasingly bear the cost of supporting an outmoded ICC regime and are being denied the benefits of a fully competitive marketplace. Maintenance of the status quo is simply no longer viable. In fact, despite their

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[1] *See* Letter from Susanne Guyer, Sr.V.P. - Fed. Reg. Affairs, Verizon, to Chairman Kevin Martin, et al., FCC, CC Docket Nos. 01-92 and 96-45 (filed Sept. 12, 2008) ("Verizon Plan").

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many differences and competitive goals, a growing majority of the communications industry has come to support immediate comprehensive reform of the ICC regime.

T-Mobile recently joined a coalition of industry members representing most sectors of the industry to ask the Commission, at a minimum, to establish a uniform default compensation rule applicable to all traffic exchanged with or on the public switched telephone network ("PSTN"), and to affirm that all Internet Protocol ("IP")-enabled services are subject to exclusive federal jurisdiction.[2] The coalition's proposal would implement:

1. **A default uniform terminating rate of $0.0007 per minute that applies to *all* traffic exchanged with or on the PSTN.** The proposed default uniform rate is no higher than the rate adopted by the Commission for the transport and termination of traffic bound for Internet service providers ("ISPs"), and the record amply demonstrates that it is a fair and equitable rate.[3] T-Mobile also supports an ultimate reduction to a default bill-and-keep system.

2. **A reasonably prompt transition for all carriers to the unified terminating rate.** T-Mobile submitted a reasonably paced transition schedule for the reduction and unification of ICC rates to $0.0007 and, ultimately, bill-and-keep.[4] T-Mobile supports retention of the ISP-bound rate cap of $0.0007 per minute and related "mirroring rule" until the transition to a uniform terminating rate is complete.[5]

Although the Verizon Plan is a positive contribution to the debate, certain parts of the plan need to be clarified or modified. For example, the interconnection rules ultimately adopted in any

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[2] *See* Letter from AT&T, et al., to Chairman Kevin Martin, et al., FCC, WC Docket No. 04-36, CC Docket No. 01-92 (filed Aug. 6, 2008).

[3] For example, in T-Mobile's experience, and as reported by Sprint and other carriers, the vast majority of Regional Bell Operating Company ("RBOC") agreements provide for terminating rates at or below $0.0007 per minute. The termination provisions for wireless and most competitive LEC agreements are based upon bill-and-keep, and the remaining competitive LECs charge termination rates in the $0.0007 range, with a few outliers. Further, the majority of traffic being exchanged is already at or below the $0.0007 rate. Thus, adopting $0.0007 rate simply recognizes current market conditions. *See, e.g.,* Letter from Norina Moy, Dir., Gov't. Affairs, Sprint Nextel, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket No. 01-92 (filed Sept. 26, 2008).

[4] *See* Letter from Kathleen O'Brien Ham, T-Mobile, to Marlene Dortch, Secretary, FCC, WC Docket No. 04-36, CC Docket No. 01-92 (filed Aug. 27, 2008) ("T-Mobile Letter").

[5] The "mirroring rule" provides that ILECs may use rate caps on compensation for ISP-bound traffic only if they offer to exchange all traffic subject to reciprocal compensation at the same capped rates. *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151, 9193-94 (2001) (subsequent history omitted) ("*ISP Remand Order*").

reform of the ICC regime should ensure that carriers do not spend needlessly to redesign their networks and that the interconnection rules treat voice traffic using IP-enabled and other advanced technologies in a nondiscriminatory fashion. Those rules must recognize and accommodate the industry's inexorable shift away from circuit-switched networks to IP platforms. T-Mobile also has concerns about the creation and operation of a revenue replacement mechanism that merely replaces ILEC revenue with additional high-cost universal service funding, rather than encouraging more efficient operations and promoting competition.

I. THE VERIZON PLAN SHOULD BE MODIFIED TO ENSURE NONDISCRIMINATORY AND EFFICIENT INTERCONNECTION REQUIREMENTS.

Intercarrier compensation reform will not be successful if some carriers are required to incur substantial costs to redesign their existing networks to meet new interconnection schemes or convert traffic to the format desired by a terminating or other interconnected ILEC. Implementing a uniform reduced termination rate will not bring about the desired reform goals of efficiency and competition if additional interconnection costs are imposed concurrently on certain classes of carriers that effectively increase their termination rates. Moreover, interconnection rules should acknowledge competitive carriers' rights under Sections 251(a)(1) and 251(c)(2) of the Communications Act to choose whether to connect directly or indirectly with ILEC networks and to interconnect "at any technically feasible point" with ILEC networks.[6]

A. Competitive Carriers Should Not Have To Designate Unnecessary POIs.

Section 1.c.i. of the Verizon Plan requires each terminating carrier to establish at least one POI in every LATA to exchange traffic. If a carrier serves end users in a LATA from a POI located outside that LATA or from another carrier's POI, however, this provision would require it to create an otherwise superfluous POI simply to meet the "POI in every LATA" requirement. Moreover, this requirement could violate Sections 251(a)(1) and 251(c)(2) of the Communications Act by forcing competitive terminating carriers to interconnect with ILEC networks at points not of their choosing, thereby hampering their efficiency.

Instead of requiring CMRS providers and other competitive carriers to mirror legacy ILEC network architecture, they should be permitted to designate whatever POI is appropriate for their customers in each LATA. Thus, for example, if a CMRS provider is terminating traffic in a LATA where it does not have a mobile switching center but where it does have circuits interconnecting with another carrier's POI, *e.g.*, at a tandem, it should be allowed to designate that point as its own POI. Section 1.c.i. should be modified accordingly to state that "Each

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[6] 47 U.S.C. § 251(c)(2)(B).

terminating carrier must establish or designate at least one POI serving each LATA, whether that POI is located in or outside the LATA and whether that POI also serves as another carrier's POI."

B. Collocation Rights Should Be Clarified.

Because the Verizon Plan does not address collocation, the Commission should clarify Section 1.c. of the Plan by adding a provision that carriers interconnecting at a CMRS POI (other than an ILEC POI also designated as a POI by a CMRS provider) do not have an automatic right to collocation. Similarly, CMRS providers interconnecting at another carrier's POI (for example, an ILEC tandem or other POI), should not be required to collocate at a terminating carrier's POI.

C. Originating Carriers Should Be Permitted To Deliver Traffic To Technically Compatible POIs Where Feasible.

In Section 1.b.iv., the Verizon Plan states that the termination charge does not cover any "multiplexing or other conversions necessary to make traffic compatible with the terminating carrier's switch." The fast growing need to convert IP-based calls to circuit-switched calls and vice-versa will impose greater cost burdens and present opportunities for arbitrage unless originating carriers are permitted to deliver traffic to technologically compatible POIs wherever possible. Accordingly, in the event that a terminating carrier has selected a POI that is technically incompatible with the traffic sent by an originating carrier, and the terminating carrier has another potential POI in the same LATA that is compatible with the traffic sent by the originating carrier, the originating carrier should be allowed to elect to designate that compatible location as a POI, and to interconnect and send its traffic through that point. Given the increasing convergence of communications technologies, all carriers should be required to permit the exchange of IP-based traffic.

More generally, consistent with Sections 251(a)(1) and 251(c)(2) of the Act, competitive originating carriers also should be permitted to deliver traffic to any POI designated by a terminating ILEC in the same LATA as the called party and, if no POI suitable for the competitive originating carrier has been designated by the ILEC, the ILEC should be required to accept interconnection at any technically feasible point chosen by the originating carrier for the exchange of traffic.

II. THE COMPENSATION SCHEME FOR CHARGES RELATED TO TRANSPORT AND TERMINATION SHOULD BE COST-BASED AND TECHNOLOGY-NEUTRAL.

The Verizon Plan should be clarified to ensure that transport, transit, and termination rates are cost-based and technology-neutral. Any additional costs generated by excessive rates will ultimately be borne by consumers.

A. Voice Traffic Should Be Treated Uniformly, Irrespective Of The Transport Protocol Or Other Technical Distinction.

By stating that the termination charge does not cover any "conversions necessary to make traffic compatible with the terminating carrier's switch," Section 1.b.iv. of the Verizon Plan raises the specter of technological discrimination. An originating carrier would be financially responsible for the cost of converting a call to the protocol of the carrier serving the called party, in addition to the cost of terminating the call, thus burdening the use of innovative technology. Voice traffic should not be treated differently for compensation purposes based upon the transport protocol used or any other technical distinction. To treat types of voice traffic differently would serve only to perpetuate those uneconomic distinctions that have led to the current untenable environment. Accordingly, in order to preclude discrimination and non-neutral cost burdens, any necessary protocol conversion should be included in the uniform termination rate.

B. ILECs Should Be Required To Provide Tandem Transit Services, And Tandem Transit Rates Should Be Reformed.

T-Mobile agrees with the proposal in Section 1.e.iv. of the Verizon Plan that the Commission quickly issue a Further Notice to propose reformation of tandem transit service rates. In the interim only, tandem transit rates should continue to be subject to existing agreements or local interconnection tariffs, and any rates subject to access tariffs should be capped at today's interstate access rates. Given the above-cost levels of these transit rates, the Further Notice should examine the adoption of cost-based tandem transit rates that are more reasonable than today's interstate access rates and should be concluded before the end of 2009. The Further Notice also should address the concern that setting rates at "today's interstate access" rates creates excessive profits for RBOCs and additional arbitrage opportunities.

Transit rate caps will be meaningless, however, unless the Commission makes it clear that ILECs must provide tandem transit services upon request at the capped rates. RBOC refusals to provide transit services can have a devastating effect on competition, especially in the case of carriers that are not built out in every LATA.

C. Transport and Originating Access Rates Should Be Reformed.

T-Mobile generally agrees with the dedicated and common transport rate levels proposed in Section 1.h. of the Verizon Plan, but *only* on a short term interim basis while the Commission considers additional reform in a Further Notice. T-Mobile also agrees with the interim originating access rates proposed in Section 1.i. of the Plan pending completion of Further Notice proceedings. Similarly to transit rates, these transport and access rates are above economic cost and require reform to the same extent as terminating intercarrier rates.

T-Mobile, however, questions two aspects of Verizon's proposed transport rules. One proposed rule is inconsistent with Verizon's general approach to transport obligations, and the other appears to conflict with the intraMTA rule. Section 1.d.i of the Verizon Plan sets forth a general compensation rule imposing financial responsibility on the originating carrier for the delivery of traffic to a terminating carrier. In the case of calls originated by an ILEC, however, Section 1.d.i.2.a. reverses that rule for a terminating carrier that does not serve end users in the originating ILEC's service territory by imposing responsibility on the *terminating* carrier "for transport from the meet point at the boundary of the [ILEC's] territory to the terminating carrier's POI." Verizon presents no justification for this abrupt shift of transport liability in these limited circumstances. This anticompetitive proposal will needlessly provide a certain subset of carriers with another form of implicit subsidy and conflicts with the Plan's overall solution.

Second, in the case of "interexchange traffic, including intraMTA traffic carried by an IXC," Section 1.d.i. imposes responsibility on the IXC for the transport of such traffic to the terminating carrier's POI. It is the originating carrier, however, that is responsible for establishing reciprocal compensation arrangements with the terminating carrier and thus for the cost of delivering intraMTA calls to the terminating carrier under the intraMTA rule, irrespective of whether it is carried by an IXC.[7] In order to reflect the prevailing law, Section 1.d.i.1. should be modified by changing "intraMTA" to "interMTA," and Section 1.d.i.2. should be modified by deleting "not carried by an IXC."

D. The ISP Mirroring Rule Should Be Retained Pending The Transition To A Uniform Terminating Rate.

Although Section 1.g. of the Verizon Plan addresses ISP-bound traffic, it does not expressly cover the ISP "mirroring" rule. That rule requires that the $0.0007 per minute rate cap on ISP-bound traffic applies only if the ILEC paying such rate offers to charge the same rate to terminate all local traffic. The mirroring rule encourages competition and benefits the public and should be kept in effect until a transition to a uniform terminating rate is complete.

III. THE FOUR "DIALS" INCORPORATED INTO THE VERIZON PLAN MUST BE BALANCED TO PROTECT THE PUBLIC INTEREST AND AVOID ARBITRAGE.

T-Mobile generally supports Verizon's application of the rate, subscriber line charge ("SLC"), benchmark, and high-cost universal service fund ("USF") "dials" that must be balanced to generate the efficiency and competition benefits of ICC reform. Some clarification of the first three proposed dial settings would help maximize those benefits. T-Mobile objects, however, to an ICC replacement mechanism for ILECs as proposed in the case of the USF dial. More fundamental reform of the high-cost program will be necessary to realize universal service goals.

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[7] *See, e.g., Atlas Telephone Co. v. Oklahoma Corp. Comm'n.,* 400 F.3d 1256, 1264 (10th Cir. 2005).

A. The Proposed Uniform Termination Rate Should Be Viewed As An Interim Transitional Step Toward A Bill-And-Keep System.

Establishing a default uniform termination rate of $0.0007 per minute, as proposed in Section 1.f. of the Verizon Plan, is adequate as an interim measure, but that rate should be viewed merely as a step towards an ultimate bill-and-keep approach. Carriers have little incentive to benefit consumers by operating efficiently to reduce costs if they are guaranteed revenues at any level. Given the widespread use of rates lower than $0.0007 per minute in traffic exchange agreements covering most traffic in the United States, that rate will tend to provide an anti-consumer impediment to competition if it becomes a long-term solution.[8] Bill-and-keep eliminates these costs, benefiting consumers and ensuring a regime that is competitively neutral.[9]

Additionally, with respect to termination payment obligations, Section 1.d.ii. of the Plan states that CMRS providers "may assess a charge for termination." Technically, they may do so now, but other carriers are not obliged to pay such charges in the absence of an agreement.[10] The Commission should clarify that provision to acknowledge that a CMRS provider or other service provider is obliged to pay the termination charge assessed.

B. T-Mobile Agrees That SLC Caps Should Be Increased To $10.50.

To facilitate ILECs' ability to recover reductions in their ICC revenues that may be caused by reform ("access shift"), T-Mobile agrees that the cap on residential and multiline business SLCs should be increased to $10.50 per month. Recovery of network costs from a carrier's own end users, rather than from other carriers, will result in a much more efficient market, thereby encouraging the development of competition and, ultimately, lower costs for consumers.[11] T-Mobile also agrees that, if the Commission adopts Verizon's proposed ICC replacement mechanism (or any other similar plan), any support for which an ILEC may be eligible from that mechanism should be calculated as though the ILEC has raised its SLCs to the maximum rate allowed, as proposed in Section 2.a.iv. of the Verizon Plan. This requirement would protect the

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[8] *See* Letter from John Nakahata, Counsel, Level 3 Communications, LLC, to Marlene Dortch, Secretary, FCC, CC Docket No. 99-68, WC Docket No. 01-92, at 5-6 (filed Aug. 18, 2008) ("Level 3 Letter") (discussing widespread use of ICC rates below $0.0007 per minute).

[9] *See* Comments of T-Mobile USA, Inc. at 9-17, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92 (May 23, 2005) ("T-Mobile ICC Comments").

[10] *Petitions of Sprint PCS and AT&T Corp. for Declaratory Ruling Regarding CMRS Access Charges*, 17 FCC Rcd 13192 (2002).

[11] *See* Jay M. Atkinson and Christopher C. Barnekov, Federal Communications Commission OPP Working Paper 34, *A Competitively Neutral Approach to Network Interconnection*, ¶¶ 5-15, 74-90 (Dec. 2000).

public interest to some extent by ensuring that all carriers and customers are treated equally and that no consumers bear more than their equitable share of costs.

C. T-Mobile Has No Preference Between The Proposed Benchmark Options.

Verizon has proposed two potentially viable approaches for establishing a National Comparability Benchmark in Section 3 of the Plan. Regardless of the approach chosen, the Commission should ensure that any Benchmark option *accurately* reflects the amount that residential end users can *reasonably* be expected to pay monthly for service in those states that have undertaken access reform and rate rebalancing programs. Otherwise, the Benchmark will be set too low, resulting in excessive universal service subsidies and exacerbating the increasing threat to the viability of the high-cost USF program.

D. T-Mobile Objects To Any ICC Replacement Mechanism Funded By Universal Service Contributions.

T-Mobile has long argued against a revenue replacement fund and has strong reservations regarding the creation of a new universal service subsidy that would simply replace existing access and other ICC revenues, as proposed in Section 4 of the Verizon Plan.[12] T-Mobile would rather see the Commission focus on overall universal service reform as the better way to address these issues.

Adopting additional USF support or similar recovery mechanisms to replace lost ICC revenue simply increases an already overburdened support regime and does nothing to promote operational efficiencies. Revenue neutrality perpetuates current operational inefficiencies and stymies competition by forcing competitive carriers and their customers to subsidize inefficient legacy networks. Accordingly, T-Mobile generally supports CTIA's proposal for overall comprehensive reform of the high-cost USF program. Under CTIA's proposal, interim steps would be taken to rationalize the current system and eliminate excessive support while long-term reform is pursued. High-cost support is intended "to benefit the customer, not the carrier,"[13] and should be based on the forward-looking cost of serving customers using the most efficient technology in each high-cost area, irrespective of the carrier serving those customers.

If the Commission nevertheless mandates some form of ICC replacement subsidy for carriers, support should be no higher than is necessary to allow properly defined supported services to be provided at reasonable rates (*i.e.*, rates that do not result in service penetration levels below those deemed consistent with universal service). Simply replacing the access charge revenue stream

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[12] *See, e.g.,* T-Mobile ICC Comments at 26-30.

[13] *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2001).

with no consideration of the actual cost of serving customers in a given service area encourages continuing inefficient network operations in order to receive inflated, guaranteed subsidies. Such a result, as is often the case today, results in excessive charges to consumers. The Commission must ensure that recovery under the mechanism is carefully managed and that carriers are incented to operate more efficiently. An ILEC should not receive any support unless it has first increased or imputed its SLCs to the maximum level allowed. Moreover, Sections 214(e) and 254 of the Communications Act require that any ICC replacement mechanism be fully portable to competitive carriers in order to fulfill the principles of competitive and technological neutrality.[14]

Finally, the replacement mechanism should sunset after three years, consistent with the proposed three-year transition to a uniform termination rate in Section 5 of the Verizon Plan.[15] The Commission can at that time revisit the issue of whether and how the replacement mechanism would be incorporated into other existing high-cost funds.

IV. THE COMMISSION HAS AMPLE AUTHORITY TO ESTABLISH A DEFAULT UNIFORM INTERSTATE AND INTRASTATE TERMINATION RATE.

Various parties have set forth valid legal theories that support the Commission's authority to implement comprehensive ICC reform, and in particular, to establish a default uniform rate for termination of traffic on the PSTN. First, the Commission has jurisdiction over interstate and intrastate access services, reciprocal compensation, and ISP-bound calls for all traffic and technologies under Section 201(b) and Section 251(b)(5) of the Act.[16] As Level 3 Communications, LLC ("Level 3") points out, the Commission's authority under Sections 201

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[14] *See id.* at 616, 622 (high-cost program "must treat all market participants equally . . . so that the market, and not . . . regulators, determines who shall compete for and deliver services to customers;" "portability . . . is dictated by principles of competitive neutrality and the statutory command [of Section 254(e) of the Act]").

[15] T-Mobile proposed a somewhat longer transition period to implement a bill-and keep system. T-Mobile Letter at 2.

[16] Section 201(b) requires that all carriers' charges and practices be just and reasonable, and authorizes the Commission to prescribe any rules and regulations that are necessary to carry out the provisions of the Act. *See* 47 U.S.C. § 201(b). Section 251(b)(5) provides that all LECs have a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." *Id.* § 251(b)(5). The reference to "telecommunications" (broadly defined by the Act as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received") thus would include toll calls, interstate and intrastate traffic, traffic exchanged between a LEC and another category of carrier and one-way traffic. *Id.* § 153(43). Section 251(b)(5) also implicates the "reasonable approximation" of "additional costs" standard set forth in Section 252(d)(2)(A)(ii) of the Act. *Id.* § 252(d)(2)(A)(ii).

and 251(b)(5) are not mutually exclusive.[17] For example, the Commission has asserted jurisdiction over intraMTA, interstate CMRS traffic under both Sections 201(b) and 251(b)(5).

The Commission's authority with respect to interstate access, reciprocal compensation, and ISP-bound traffic rates is well-defined. And, although the Commission suggested in the later-reversed *ISP Remand Order* that Section 251(b)(5) cannot be applied to intrastate access, the Commission's suggestion was based upon a conclusion that Section 251(g) of the Act did not encompass intrastate access services.[18] Section 251(g), however, preserves the existing access charge regime until the Commission promulgates superseding regulations, thus carving it out of Section 251(b)(5). In fact, Section 251(g) arguably does cover intrastate access charges because the intrastate access charge regime was established along with the interstate access charge regime in the *AT&T Consent Decree*,[19] which is expressly included within the scope of Section 251(g). Thus, Section 251(g) preserves the interstate and intrastate access regime until superseding regulations – *i.e.*, reforming the ICC regime – are promulgated.[20]

Furthermore, in reversing the *ISP Remand Order*, the U.S. Court of Appeals for the D.C. Circuit concluded that there was a "non-trivial likelihood" that the Commission could establish bill-and-keep for ISP-bound traffic under Section 252(d)(2)(B).[21] The court in *Iowa Utilities Board* had previously interpreted Section 252(d)(2)(B)(ii) to prohibit rate setting by the Commission, while allowing the Commission to establish a rate "methodology."[22] Thus, bill-and-keep should be considered a rate "methodology" permitted by *Iowa Utilities Board* to be imposed by the Commission. If bill-and-keep is a permitted rate methodology, a slightly higher rate, such as the proposed unified rate of $0.0007, also should be a permissible interim rate during a transition to bill-and-keep.

If the Commission concludes, however, that Section 251(b)(5) does not provide authority to unify and reduce intrastate originating or terminating access rates, the Commission could

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[17] *See* Level 3 Letter at 8-18.

[18] *See ISP Remand Order*, 16 FCC Rcd at 9166-75.

[19] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1982).

[20] Because Section 251(b)(5) does not authorize call origination compensation, it can be interpreted to prohibit originating access charges once the Commission promulgates ICC reform rules.

[21] *WorldCom, Inc. v. FCC*, 288 F.3d 429, 434 (D.C. Cir. 2002).

[22] *See AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

preempt such rates in order to fulfill the purposes of interstate ICC reform as Verizon suggests.[23] Carriers can no longer reliably identify the jurisdiction of, or separate, different types of traffic, perpetuating arbitrage and disputes over "phantom traffic." This jurisdictional inseverability justifies preemption, which may be necessary to avoid frustration of the purposes of ICC reform. Intrastate access rates also contain significant implicit subsidies, which undermine the goal of Section 254(b)(5), requiring "specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service."

V. T-MOBILE'S PENDING PETITION FOR CLARIFICATION OR RECONSIDERATION OF THE WIRELESS TERMINATION TARIFF ORDER SHOULD BE GRANTED.

As part of its comprehensive ICC overhaul, the Commission should resolve T-Mobile's long pending petition for clarification or, in the alterative, reconsideration of the Commission's decision regarding incumbent ILEC wireless termination tariffs ("*T-Mobile Order*").[24] T-Mobile supported the Commission's decision in the *T-Mobile Order* to prohibit ILECs from unilaterally imposing compensation obligations for non-access CMRS traffic pursuant to tariff and to establish a mechanism to ensure that CMRS providers secure reasonable reciprocal compensation rates. Because the *T-Mobile Order* relied indirectly on pricing rules that were struck down as to wireline traffic, however, T-Mobile sought clarification that the Commission has authority to rely on those rules as to wireless calls under Sections 332(c)(1)(B) and 201(a) of the Act. T-Mobile also asked that the Commission affirm that certain pricing standards govern any proceedings to enforce or challenge the ILECs' tariffs for past periods, irrespective of whether the negotiation and arbitration procedures of Sections 251 and 252 of the Act have been invoked or the nature of the proceedings.

The Commission should act quickly to grant T-Mobile's petition, which has been pending for more than three years. Clarifying the scope of the pricing rules adopted in the *T-Mobile Order* would ensure that the Commission's preference for contractual arrangements for non-access CMRS traffic is readily implemented under the *T-Mobile Order*. Furthermore, granting the petition would help ensure that the prospective relief established in the *T-Mobile Order* and the scope of its pricing rules are upheld.

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[23] *See* Letter from Donna Epps, V.P. Fed. Regulatory, Verizon, to Marlene Dortch, Secretary, FCC, CC Docket No. 01-92; WC Docket Nos. 04-36, 06-122, at 5-25 (filed Sept. 19, 2008).

[24] *See Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, 20 FCC Rcd 4855 (2005) ("*T-Mobile Order*"); T-Mobile USA, Inc. Petition for Clarification or, in the Alternative, Reconsideration, CC Docket No. 01-92 (filed Apr. 29, 2005).

VI. CONCLUSION

The Verizon Plan provides a useful framework for comprehensive ICC reform. Modification of a number of its provisions, however, is necessary in order for the Commission to achieve its stated goals for ICC reform consistent with the Communications Act. In particular, Verizon's proposed interconnection provisions and a number of related transport and termination compensation provisions could impose inefficient legacy network architecture on competitive carriers and burden consumers with unnecessary costs and stifle competition. In the absence of substantial modification, the proposed ICC replacement mechanism also would perpetuate the inefficiencies of the current high-cost program. Implementation of meaningful ICC reform will require that the Commission recognize the increasing technological convergence of the communications industry and adopt forward-looking interconnection and high-cost USF requirements.

In accordance with Section 1.1206 of the Commission's rules, this letter is filed with your office for inclusion in the public record of the above referenced proceeding. If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Sincerely,

/s/ Kathleen O'Brien Ham
Kathleen O'Brien Ham

/s/ Sara F. Leibman
Sara F. Leibman

/s/ Amy R. Wolverton
Amy R. Wolverton

/s/ Indra Chalk
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